

D/L. 19.
February 8, 2024.
MNS.

WPA No. 26271 of 2023

Smt. Moumita Saha Naskar
Vs.
The District Magistrate and Collector,
South 24 Parganas and others

Mr. Subhadeep Ghosh,
Ms. Papiya Bhowmick

... for the petitioner.

Mr. Snehatosh Majumder,
Mr. Sattwik Majumder,
Ms. Urmi Sengupta

...for the respondent no. 2.

1. A daughter has preferred the present writ petition. The first authority, that is the Sub-Divisional Officer (SDO), on an application of the private respondent no. 2, the mother, under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (2007 Act for cancellation of a gift deed executed by the owner/mother in favour of the petitioner, rejected the said application.
2. Upon an appeal being preferred, the District Magistrate (Appellate Authority), by a cryptic order without proper reasons, upset the order of the SDO and cancelled the deed.
3. The said order of the appellate authority is the subject matter of the challenge herein.

4. Learned counsel for the petitioner submits that the gift deed does not contain any clause within the contemplation of Section 23(1) of the 2007 Act.
5. Secondly, the Appellate Authority was cryptic and did not disclose any reason behind the setting aside of the order of the first forum.
6. Learned counsel appearing for the private respondent no. 2, who is the main contesting respondent, points out that in one of the clauses appearing at internal page 8 of the gift deed, it has been mentioned that the donee shall take special care of the welfare of the donor.
7. Learned counsel argues that Section 23 of the 2007 Act does not contemplate as such that the language of the said section has to be reproduced in the gift deed itself.
8. The tests laid down in Section 23(1) may very well be established by circumstantial evidence as well.
9. It is submitted that the private respondent no. 2 submitted several documents before the first forum which were not considered by the first forum and have not been annexed to the writ petition as well.
10. Upon hearing learned counsel for the parties, this Court is of the opinion that at least an

ingredient of the test stipulated in Section 23(1) has been inserted in the gift deed by way of the sentence “The DONEE take special care of the welfare of the DONOR”.

11. In Section 23(1) of the Statute, it is stipulated that the senior citizen, for cancellation of the gift deed, has to establish that the property was transferred by way of gift or otherwise subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor. The transferee has to refuse or fail to provide such amenities and physical needs, for the said gift deed to be cancelled.

12. Thus, two components are to be established for getting an order under the said provision: first, that the transfer was effected with the understanding and on the condition that the basic amenities and physical needs of the transferor would be provided by the transferee; secondly that the transferee has refused or failed to provide such amenities and physical needs.

13. It is no doubt arguable in the present case as to whether the expression that the donee shall “take special care of the welfare” of the donor, as used in the gift deed, includes the idea that the transferee/donee shall provide basic

amenities and physical needs of the transferor, thus coming within the contemplation of the statute.

14. That apart, the private respondent no. 2 was also required to be established that the donee has refused or failed to do so.

15. Both from the orders of the first forum and the appellate authority, the ingredients and consideration of such aspects of the matter are found to be absent.

16. Just as the District Magistrate, who proceeded on an extremely cryptic manner by passing the judgment merely on conjecture in observing that the gift deed was not executed with the free consent of the donor, the SDO also merely proceeded on the premise that no conditions were laid down in the gift deed itself as to whether the present writ petitioner had to look after and/or provide basic amenities to the petitioner.

17. Thus, the SDO also overlooked the relevant condition in the gift deed which has been pointed out before this Court, regarding the donee being duty-bound to take special care of the welfare of the donor. Also, the other substantial evidences were not considered by either the SDO or the District Magistrate.

18. Hence, WPA No. 26271 of 2023 is disposed of by setting aside the order of both the District Magistrate as well as the SDO and remanding the matter to the SDO for a fresh hearing and adjudication on the merits of the application of the private respondent under the 2007 Act.

19. While deciding the same, the SDO shall take note of the observations made above and take into consideration the relevant clause of the gift deed regarding special care of the welfare of the donor to be taken by the donee as well as any other circumstantial evidence, if produced by the petitioner/donor in that regard.

20. For such purpose, the SDO shall give further opportunity of production of documents and other evidence, if any, to both the parties and, after a fresh hearing being given, re-adjudicate the issues on merits in accordance with law and in the light of the above observations.

21. The entire exercise shall be concluded by the SDO as expeditiously as possible, preferably within three months from the date of communication of this order to the SDO.

22. The parties as well as the SDO shall act on the server copy of this order without insisting

upon prior production of certified copy for the purpose of compliance.

23. There will be no order as to costs.

24. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)